

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

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INDECK KEYSTONE ENERGY LLC,)

Plaintiff,)

VS)

VICTORY ENERGY OPERATIONS,)
LLC,)

Defendant)

Civil Action No. 04-325 Erie

Judge Sean J. McLaughlin

JURY TRIAL DEMANDED

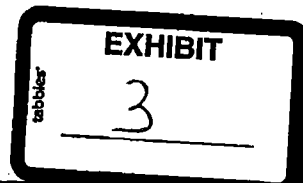
ORAL AND VIDEOTAPED DEPOSITION OF

STEPHEN YOUNG KANG

December 13, 2005

Volume 1 of 1

Oral Deposition of STEPHEN YOUNG KANG, produced as a witness at the instance of MR. CHRISTOPHER T. SHEEAN, ATTORNEY FOR DEFENDENT VICTORY ENERGY OPERATIONS, LLC, and duly sworn, was taken in the above-styled and numbered cause on December 13, 2005, from 1:50 p.m. to 5:03 p.m., before Lydia P. Battle, CSR, RPR, in and for the State of Texas, reported by stenographic means, at the offices of Jones & Young, P.C., 2700 Post Oak Blvd., Suite 1350, Houston, Harris County, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record attached hereto.



1 MR. SHEEAN: Those are all the questions I
2 have at this time.

3 EXAMINATION

4 Q (BY MR. GISLESON, 3:42 p.m.) Good afternoon.

5 A Hi.

6 Q So your undergraduate and major from Carnegie
7 Mellon, you got a bachelor of science in?

8 A Economics, industrial management.

9 Q Oh, in industrial management?

10 A Yes.

11 Q Do you have any education or training in
12 engineering?

13 A No.

14 Q Throughout the time that you were, first, chief
15 financial officer and then president of Erie Power
16 Technologies, were you relying on the engineers with
17 respect to their knowledge and experience with the
18 technology underlying the license agreement with Victory
19 Energy Operations?

20 A Yes.

21 Q I want to ask you some questions about your
22 discussions with Mark White prior to the time that the
23 license agreement between Erie Power and VEO was executed.
24 How did Mark White describe to you the technology that
25 was to be licensed to VEO?

1 A He said it was 150 pounds per hour pressure
2 or -- or less size or these were outdated, antiquated
3 models to Erie Power.

4 MR. SHEEAN: I'm going object to the extent
5 it mischaracterizes prior testimony.

6 Q (BY MR. GISLESON) When you're referring to 50
7 (SIC) pounds, is it -- do you mean 150,000 pounds per hour?

8 A Yes. I'm sorry. 150 -- 150,000, yes, yes.

9 Q And Mark White told you that the technology was
10 outdated and antiquated?

11 A Yes.

12 Q And that's what Mark White told you prior to the
13 time the license agreement was executed, correct?

14 A Yes.

15 Q Did you rely on his description as to the
16 technology in authorizing him to proceed with the
17 negotiations and execution of a license agreement?

18 MR. SHEEAN: Objection. Vague.

19 A I relied on him and others, other engineers, to
20 look into the technical scope definition for the license
21 agreement.

22 Q (BY MR. GISLESON) Now, in terms of the
23 technical scope definition for the license agreement, you
24 said that you wanted to have Mark check with the
25 engineers about what those specifications were; is that

1 would be outside of the Product License Agreement." Do
2 you see that?

3 A Yes.

4 Q And you read this January 14, 2003, e-mail at or
5 about the time that you received it from Bob Gdaniec; is
6 that correct?

7 A Yes.

8 Q Now, on or after January 14, 2003, and prior to
9 the time that the license agreement was signed by Mark
10 White, did Mark White ever go to you to express any
11 concerns he had about Bob Gdaniec's involvement with the
12 negotiation and preparation of the license agreement?

13 A No.

14 Q Did Mark White come to you to advise that Bob
15 Gdaniec did not understand the scope of the license
16 agreement?

17 A No.

18 Q Was it your expectation that Bob Gdaniec develop
19 an understanding of the scope of the license agreement?

20 A Right. Yes.

21 Q Why did you want Bob Gdaniec to have an
22 understanding as to the scope of the license agreement?

23 A Because it would be silly for me to try to
24 understand technically what these terms or scopes or
25 boilers would mean. So I expected that the existing

1 Q And did you, in turn, expect Mark White to rely
2 on the information he was being provided by the engineers?

3 A I expected he would have discussion, yeah, with
4 Bob Gdaniec and Dan Levstek and everybody to come up with
5 this such annex or...

6 Q So that the final version of Annex I for the
7 product in the license agreement would be a joint product,
8 if you will, of both sales and marketing and engineering?

9 A Yes.

10 MR. GISLESON: Mark that, please.

11 (Exhibit No. 16 was marked.)

12 Q (BY MR. GISLESON) I'd like to show you what's
13 been marked as Kang Exhibit 16, which is a document
14 stamped IKE 354 to 355. Would you take a look at that,
15 please.

16 A (Nods head.)

17 Q Looking at the first page of this, do you
18 recognize this as an e-mail from Dave Briggs dated
19 January 30, 2003, to Mark White that he copied to Bob
20 Gdaniec and Dan Levstek on the subject of "Annex of
21 License Agreement"?

22 A Yes.

23 Q And he writes: "Mark, I have looked at the
24 annex as well and the following are my comments as to
25 what should be added." And he identifies, among other

1 received from Dave Briggs in the Engineering Department?

2 MR. SHEEAN: Objection. Lack of foundation.
3 Calls for speculation.

4 A It -- it appears that way, yes. Yes. Excuse me.

5 Q (BY MR. GISLESON) When you instructed Mark White
6 to check with the engineers concerning the preparation of
7 Annex I --

8 A Excuse me. Excuse me. Yes.

9 Q -- did he tell you that he would do that?

10 A I'm sorry. Can you repeat the question.

11 Q Sure. You told Mark -- strike that. You
12 instructed Mark White to consult with the engineers in
13 the preparation of Annex I to the license agreement,
14 correct?

15 A Yes, that's correct.

16 Q Did Mark White, in turn, respond to you that he
17 would follow that instruction?

18 A Yes.

19 Q Did Mark White thereafter tell you that he, in
20 fact, had consulted with the engineers?

21 A Yes.

22 Q Did he give you any details as to the feedback
23 he received from the engineers?

24 A No.

25 Q Did he discuss in any way the information he had

1 agreement?

2 MR. SHEEAN: Objection. Vague.

3 A Yeah, I -- I -- I pretty much said, "Okay,
4 that's fine, John. Let's move on to the topic of asset
5 sale discussion."

6 Q (BY MR. GISLESON) You were shown a copy of the
7 Asset Purchase Agreement between CMI America, Inc., and
8 Erie Power Technologies --

9 A Yes.

10 Q -- which was marked as Exhibit Kang 11, in which
11 you were shown Section 2.10, on page 11, that includes,
12 among other things, the disclosures that "To Seller's
13 knowledge no third party is infringing or has
14 misappropriated any of the Intellectual Property Rights;"
15 and that "no license or royalty agreement to which Seller
16 is a party is in breach or default by any party thereto,
17 or the subject of any notice of termination given or, to
18 Seller's Knowledge, threatened." Do you see that?

19 A Yes.

20 Q Were you relying on the representation by John
21 Viskup in your meeting with him that VEO was not
22 infringing the license agreement when you gave those
23 representations?

24 MR. SHEEAN: Objection. Foundation.

25 A No, I didn't rely based on John's statement. I

1 relied on basically overall feedback or information I had
2 up to that point.

3 Q (BY MR. GISLESON) And if we look at page 36,
4 which is the definition of "Knowledge".

5 A Yes.

6 Q It says, "Knowledge means the actual knowledge
7 of Stephen Kang, Daniel Levstek and Tracey Peterson, in
8 each case after reasonable inquiry; and "Know," "Knows,"
9 and "Known" shall have meanings correlative to the
10 foregoing." Do you see that?

11 A Yes.

12 Q In connection with giving the representations in
13 this Asset Purchase Agreement, did you go back and look
14 at all the correspondence between EPTI on the one hand
15 and VEO on the other hand --

16 A No.

17 Q -- to determine what EPTI was saying to VEO
18 about VEO's performance on the license agreement?

19 A No, we did not go back and look at every
20 correspondence, no.

21 Q Did you look at the internal correspondence
22 within EPTI to determine what information Mark White had
23 concerning the interpretation and scope of the license
24 agreement?

25 A No.

1 Q You were shown a copy of Exhibit Kang 10, which
2 is the letter that Bob Gdaniec sent to Mark White that
3 concerned both the proposed Asset Sale Agreement with
4 VEO, as well as EPTI's concerns regarding VEO's performance
5 under the existing license agreement, correct?

6 A Correct. Yes.

7 Q And this letter, both the main portion of the
8 letter written by Bob Gdaniec, as well as the last two
9 pages concerning EPTI concerns regarding VEO performance
10 under the existing agreement, was discussed internally at
11 EPTI prior to the time that it was sent; is that right?

12 A Yes.

13 Q And the letter represented the consensus, if you
14 will, among those at EPTI who discussed these issues; is
15 that correct?

16 A Consensus among the engineers, yes.

17 Q Who participated in the discussion?

18 A Myself, Bob Gdaniec, Chris Petcos, Dan Levstek,
19 as well as Bob Gdaniec also went to Ted Fuhrman and --
20 and consulted.

21 Q And looking at the second to the last page,
22 under paragraph No. 1, it says, "VEO currently licenses
23 only the M series product line which has a very specific
24 geometry and characteristics. In review of some of the
25 VEO recent projects and proposals, it appears that the

1 majority of projects that VEO is pursuing or has
2 completed have been outside the definition of the license
3 agreement." Does that also mean outside the scope of the
4 license agreement?

5 A That is what I assume when I read it.

6 Q It says, "Of particular concern most recently
7 are the Oxy and Dallas Ft Worth Airport projects which
8 are well outside the bounds of the products defined in
9 the agreement. VEO will need to redirect their attention
10 on the sales," slash, "marketing and execution of the
11 products that are defined in the license agreement.

12 (Annex 1 of the current agreement provides a clear
13 definition of the "M"-Series design with product size,
14 dimensional data for the different size ranges, typical
15 cross-section of the boiler and overall boiler
16 construction which includes refractory front and rear
17 walls, tangent furnace and outer wall tubes and pressure
18 casing design." Do you see that?

19 A Yes.

20 Q After EPTI sent this letter to VEO, did you, in
21 your capacity as president of EPTI, advise VEO that it
22 could sell products outside the scope of Annex I, as
23 defined in that paragraph?

24 A No, I did not notify.

25 Q Did you instruct anyone from EPTI to advise VEO

1 that VEO was permitted to sell products outside the scope
2 of the license agreement as defined in that paragraph 1?

3 A No.

4 Q Did you receive a copy of VEO's response to the
5 concerns that EPTI raised about VEO's performance?

6 A I don't -- I do not recall pursuing anything.
7 Of course, they might have responded, but I do not recall
8 right now.

9 (Exhibit No. 18 was marked.)

10 Q (BY MR. GISLESON) I'd like to show you what's
11 been marked as Kang Exhibit 18. It's a document stamped
12 VEO 632 to 635.

13 A Uh-huh.

14 Q Looking at the first page of this, do you see
15 how it's a March 30, 2004, e-mail from Mark White to Bob
16 Gdaniec in which you are cc'd on the subject of "EPTI
17 License Concerns"?

18 A Yes.

19 Q Did you, in fact, read this e-mail with the
20 EPTI -- with the VEO response?

21 A It looks familiar.

22 Q Looking at the second page, Mark White writes to
23 Bob Gdaniec: "We have reviewed your license of March
24 26th, 2004, which details your concerns regarding VEO's
25 compliance with the license agreement dated January 7th,

1 point that...

2 Q You said that you contacted EPTI's lawyers,
3 MacDonald Illig, and EPTI, about the issue of VEO's
4 performance under the license agreement; is that right?

5 A Yes.

6 Q Did you not pursue the issue of a potential
7 breach with -- strike -- strike that. Is it correct that
8 you did not pursue the issue of whether VEO is in breach
9 of the license agreement with MacDonald Illig because the
10 bankruptcy was underway?

11 A Yes. Our focus was more on the bankruptcy
12 issue, so we put this issue on the back burner.

13 Q And, then, before the issue could move to the
14 front burner, the assets were sold?

15 A Yes. That's correct.

16 Q You were asked some questions about the potential
17 sale of the technology from EPTI to VEO. Who was involved
18 in those discussions internally at EPTI?

19 A Myself, Dan Levstek, Bob Gdaniec, and Chris
20 Petcos were four key members.

21 Q Who first raised the idea of VEO purchasing the
22 technology?

23 A It was actually really sort of a phone call from
24 Mark White to me.

25 Q When did that call occur?

1 A Sometime like I think January -- like very early
2 part of 2003 or -- I'm sorry. 2004. January 2004. And
3 he just called me on my cell phone and -- and asked how I
4 was doing, and then -- and then -- and brought that issue
5 up.

6 Q At the time of Mark White's phone call, had EPTI
7 already entered bankruptcy?

8 A Yes.

9 Q What did Mark White tell you that VEO had an
10 interest in acquiring?

11 A He was very vague. He said, basically, "I --
12 we're interested in purchasing your Keystone boiler," is
13 how he put it.

14 Q Did he give it any more detail than that?

15 A No, no.

16 Q And then what was the next thing that happened?

17 A He kind of tried to feel out whether or not I
18 was interested or not. I explained to him that actually
19 EPTI might be interested because we're in bankruptcy and
20 we may sell certain parts of our assets, and that -- that
21 I would get back to him on that.

22 Q Did you get back to him?

23 A Yes, I went back and talked to our people and we
24 did discuss -- that's when we discussed selling of the
25 "M" line.

1 Q The people with whom you spoke, were those in
2 the Engineering Department?

3 A Yeah. They're Dan Levstek, Bob Gdaniec and
4 Chris Petcos.

5 Q Was it EPTI that first prepared a draft of the
6 proposed sale agreement?

7 A I believe we actually received that draft. I
8 don't know if we actually initiated that draft.

9 MR. JONES: What sale agreement exactly?

10 MR. GISLESON: Of the potential -- drafts of
11 the potential sale agreement between EPTI and VEO.

12 MR. JONES: Oh, okay.

13 MR. GISLESON: For technology.

14 A Later on, there was some draft that might have
15 been done by a Schnader law firm that was representing
16 EPTI in bankruptcy. So, that might have been the draft
17 too. I mean the -- I don't know which draft.

18 MR. GISLESON: Would you mark that, please.

19 (Exhibit No. 19 was marked.)

20 Q (BY MR. GISLESON) I'd like to show you what's
21 been marked as Exhibit 19. It's a document stamped VEO
22 961 to 978.

23 A Uh-huh.

24 MR. JONES: Agreement to own.

25 Q (BY MR. GISLESON) Looking at the first page, I

1 think this is an e-mail that we saw in a prior exhibit.
2 That's from you to Mark White, copy to Dan Levstek, dated
3 February 24, 2004, in which you write: "Dan, please
4 review the attached agreement and also distribute to
5 others like Bob Gdaniec and so forth for review. Mark,
6 this is our first attempt at setting up expanded and rent
7 to own type agreement draft whereby Victory has full
8 unilateral right to exercise the option to continue and
9 keep the technology." And, then, skipping a couple of
10 sentences, you write: "We need Annex I from you also to
11 add all the lines and languages as to what specific items
12 are being sold eventually. We shall discuss how to make
13 this work." Do you see that?

14 A Yes.

15 Q And you were responding to a February 20, 2004,
16 e-mail that Mark White had sent to you in which he wrote:
17 "Stephen, pursuant with our meeting, what is the status
18 of the Keystone Sell Agreement?" Do you see that?

19 A Yes.

20 Q When was the meeting that was referenced by Mark
21 White?

22 A This is probably the meeting that we had down in
23 Oklahoma, where my days may not be clear, I mean, as to
24 whether that was April or February, but it was that
25 springtime of 2004.

1 Q And, then, turning to the next page, which is
2 stamped VEO 962 and then going through page 968, is that
3 the draft of the License Agreement and Option to Purchase
4 that was sent to VEO?

5 A Yes.

6 Q And, if you look, there's a date in the lower
7 right-hand corner, February 13, 2004, do you see that?

8 A Yes.

9 Q Now, on page 3, paragraph 6 refers to
10 "Compensation," and it says, "In consideration of the
11 rights granted herein, Licensee shall pay to licensor
12 \$250,000 payable upon the execution hereof." And, then,
13 under paragraph 7, "Option to Purchase," it says, "At the
14 conclusion of the one-year term of the licensing
15 provisions of this Agreement, at Licensee's sole
16 discretion, Licensee shall have the option to purchase an
17 assignment of the rights and Technical Information
18 licensed hereunder for the price of \$250,000 (US) payable
19 on or before the termination date of this Agreement." Do
20 you see that?

21 A Yes.

22 Q Where did the compensation amounts of \$250,000
23 under paragraph 6 and \$250,000 under paragraph 7, Option
24 to Purchase, come from?

25 A That was sort of the number that was negotiated

1 in Oklahoma between John Viskup and myself.

2 Q But there would be \$250,000, in paragraph 6, for
3 the extended license, and then, if VEO were to purchase
4 the technology, another \$250,000 payment?

5 A Right. Yes.

6 Q And what was the sequence of events leading to
7 an agreement as to the amount of compensation?

8 A You mean to these amounts?

9 Q Correct.

10 A We had a discussion down in Oklahoma about
11 selling the -- potentially the "M" line to Victory and --
12 and initially we wanted a price of one million dollars
13 and then Victory said, no, that was too high, that they
14 would pay \$250,000, and then we sort of got to \$500,000
15 during that negotiation.

16 Q In terms of discussing compensation, was the
17 subject of discussion the Standard "M" Series line of
18 boilers?

19 MR. SHEEAN: Objection. Calls for
20 speculation.

21 A Yes, we -- well, they wanted the "O" line and we
22 said, "No, 'O' line is not for sale. We're selling 'M'
23 line," and then we never made the Annex I. That's the
24 reason why I was asking for Mark White to clarify what
25 their understanding of Annex I would be, you know, such a

1 draft of sales agreement.

2 Q (BY MR. GISLESON) When the parties arrived at
3 the \$250,000, under paragraph 7, if VEO were to purchase
4 the technology, that \$250,000 contemplated purchase of
5 the "O" type technology or the "M" Series?

6 A From our side, it was the understanding that it
7 was -- that would be an "M" line for that price.

8 Q Did John Viskup tell you what VEO was willing to
9 pay if they could acquire the entire "O" type technology?

10 A Yes. \$500,000.

11 Q If he could acquire the whole "O" type technology?

12 A Right, right.

13 Q Paragraph 5 is a confidentiality provision that
14 says, "All of the Technical Information supplied by
15 Licensor under this Agreement shall be deemed to be part
16 of Licensor Confidential Information and shall be for the
17 exclusive use of Licensee," and there's some additional
18 phrases there.

19 A Yes.

20 Q During your discussions with Mark White or John
21 Viskup concerning the proposed sale agreement, did they
22 ever dispute any of the confidentiality assertions that
23 EPTI made in the draft sales agreements?

24 A No.

25 Q Did they ever say to you: "We don't believe

1 this is confidential"?

2 A No.

3 Q Did they ever say to you that they believed the
4 Keystone technology that you were negotiating was already
5 in the public realm?

6 A No.

7 Q And if we look at page VEO 969, there's a
8 heading for "Annex I" and it's blank. Is that because
9 you expected VEO to provide Annex I?

10 A Yeah, we both jointly agreed to come up with
11 Annex I and we hadn't come up with it.

12 Q And then, looking at page VEO 970, this is a
13 February 25, 2004, e-mail from Mark White to you on the
14 subject of "License Agreement and Option to Purchase," in
15 which he writes: "In general, the document is not what
16 we expected. It is not our desire to enter into an
17 agreement where we would continue to be subject to
18 royalty payments (except for those units above the
19 purchased range), have no guarantee of acquiring the
20 technology and possibly lose our investment should EPTI
21 be forced to liquidate. However, we are willing to enter
22 into an agreement that would allow VEO to purchase the
23 Keystone technology outright for the given range
24 discussed. This type of agreement would include two
25 payments, the first of which would be put into an escrow

1 account to protect VEO should EPTI be forced into
2 liquidation. The second payment would be due within six
3 months thereafter. Once we enter into a purchase
4 agreement, the current license agreement would be
5 terminated. The range of boilers would include the
6 smallest available (3M) or a steam flow of 9,500 pph up
7 to 165,000 pph."

8 The reference there to the two payments, is
9 that one of 250,000 and then a second of 250,000?

10 MR. SHEEAN: Objection. Calls for
11 speculation. Lack of foundation.

12 A That was my understanding, yes.

13 Q (BY MR. GISLESON) Well, after the draft of
14 February 13, 2004, of the License Agreement and Option to
15 Purchase was sent to VEO, was there any further negotiation
16 of the purchase price?

17 A No.

18 Q And if we turn to page VEO 973, this is a March
19 3, 2004, e-mail from Mark White to you and Dan Levstek,
20 on the subject of "Completed Annex," and he writes:
21 "Stephen & Dan, a draft of the annex is enclosed for your
22 review and comment." Then on pages 974 and 975 is the
23 proposed annex; is that right?

24 A Yes.

25 Q And under "Drawings and Information," he writes:

1 "All associated Keystone® "O" and "D" type drawings and
2 information required for the design, fabrication, assembly
3 and maintenance of the Boiler Technology." Did you
4 understand that he wanted all the "O" drawings?

5 A Yes.

6 Q Was that acceptable to EPTI?

7 A No.

8 Q And then turn to the next page, under "License
9 to Use the Keystone Name," he writes: "As a part of this
10 agreement, VEO shall be granted a perpetual license for
11 use of the trade name 'Keystone'." Was that acceptable
12 to EPTI?

13 A No.

14 Q Why not?

15 A That just was not what we offered.

16 Q Why wasn't EPTI willing to give a perpetual
17 license for use of the "Keystone" name?

18 A Because then, in essence, we will be giving away
19 Keystone boiler brand, I mean, then they could just put
20 "Keystone" on the boilers.

21 Q Why didn't EPTI want to sell or provide the
22 right to use the Keystone name perpetually to VEO?

23 A Because the price at the -- that it was being
24 negotiated would not -- that would be too low a price to
25 give that up.

1 Q Did EPTI consider the Keystone name to be the
2 available asset?

3 A Yes.

4 Q And then turning to page VEO 976, this is a
5 March 3rd e-mail from Mark White to you and Dan Levstek,
6 again on the subject of "Completed Annex," in which he
7 writes: "In my haste to submit the annex, I failed to
8 incorporate several of my comments. I have made the
9 necessary changes to the annex, a copy of which is
10 enclosed. We apologize for this inconvenience." And you
11 read this e-mail and the attached annex, right?

12 A Right.

13 Q Just as you read his prior e-mail and the
14 attached annex, correct?

15 A Yes.

16 Q Looking at the revised annex, under "Drawings
17 and Information," he writes: "All associated Keystone®
18 'O' and 'D' type drawings and information required for
19 the design, fabrication, assembly and maintenance of the
20 Boiler Technology. Drawings and information shall be
21 provided for all 'M,' ('O' Type) and 'D' Series boilers
22 for projects executed within the Capacity Range as stated
23 above that may be of custom design."

24 Did you have any discussions with Mark White
25 about his interest in obtaining drawings for custom

1 designed boilers?

2 A No, I didn't have a direct discussion.

3 Q In looking under "Computer Software & Hardware,"
4 VEO also wanted, among other things, the Keystone &
5 Shared Component Program (KPSC), including the source
6 code for that software?

7 A Right.

8 Q Do you see that?

9 A Yes.

10 Q Was EPTI willing to provide the source code for
11 that software?

12 A No.

13 Q Why not?

14 A Once again, this is sort of their wish list --
15 Victory's wish list, and so we didn't agree to all of
16 these terms.

17 Q Under the next page, for "License to Use the
18 Keystone Name," they have: "As part of this agreement,
19 VEO shall be granted a perpetual and exclusive license
20 (at least with respect to the assets being transferred
21 hereunder) for use of the trade name 'Keystone'." Did
22 EPTI, at this time, plan to use in the future the
23 Keystone name in its own business?

24 A Yes.

25 (Exhibit No. 20 was marked.)

1 on page VEO 991, this is for "Sale of Keystone Watertube
2 Boiler Technology, Description of Technology;" is that
3 correct?

4 A Yes.

5 Q And the boiler technology identified by EPTI
6 that would be sold was "Keystone® Standard M Series
7 industrial watertube boiler technology in a capacity
8 range up to and including 165,000 pph of saturated steam
9 at design pressures no greater than 400 psig;" is that
10 correct?

11 A Yes.

12 Q And then, if we turn to page VEO 995, do you see
13 how that page and the one that follows is a Mark White
14 e-mail dated March 24, 2004, to you, Bob Gdaniec and Dan
15 Levstek on the subject of the "Completed Annex," in which
16 he is making changes or proposed changes to the agreement?

17 A Yes.

18 Q He writes: "Based on our recent discussions
19 relative to a technology purchase through Rule 363, the
20 Amendment as provided would not be appropriate for this
21 purpose. A document outlining the sale of the technology
22 requires development. However, the Annex #2 could be
23 utilized to define the technology purchase." Do you see
24 that?

25 A Yes.

1 Q (BY MR. GISLESON) I'd like to show you what's
2 been marked as Kang Exhibit 20. It's a document stamped
3 VEO 981 to VEO 996.

4 MR. JONES: Sounds like they're having a
5 party.

6 Q (BY MR. GISLESON) Looking -- looking at the top
7 of the first page, do you see how that's an e-mail from
8 Dan Levstek, dated March 24th, 2004, to Mark White,
9 copied to you on the subject of the "Completed Annex"?

10 A Yes.

11 Q And he's responding to Mark White's e-mail of
12 March 3rd that transmitted his Annex I; is that correct?

13 A Yes.

14 Q And Dan Levstek writes: "Attached is the
15 marked-up Agreement with our comments. We would propose
16 it to be an amendment to the existing license agreement
17 with the option to purchase included. This would allow
18 the portions of the license that are not changed to
19 remain in place if the purchase option is not exercised."
20 Do you see that?

21 A Yes.

22 Q And you reviewed this e-mail as well as the
23 attached Amendment to License Agreement and Option to
24 Purchase; is that right?

25 A Yes.

1 Q In preparing this e-mail and the Amended License
2 Agreement and Option to Purchase, did Dan Levstek discuss
3 that document with you?

4 A Yes.

5 Q And you agreed to the substance of his e-mail,
6 as well as the changes to the proposed License Agreement
7 and Option to Purchase?

8 A Yes.

9 Q If you look at page VEO 984, paragraph 6 and 7,
10 the amount of compensation remained the same, correct?

11 A Let's see here, 984. Yes.

12 Q And then, on page VEO 989, Annex I is now
13 "Extension of License Agreement and Description of
14 Technology;" is that correct?

15 A Yes.

16 Q And under "Drawings and Information," in the
17 second sentence, it reads: "Drawings and information
18 shall be provided for standard M series boilers;" is that
19 correct?

20 A Yes.

21 Q And then turning to --

22 MR. SHEEAN: Which page is that on, John?

23 MR. GISLESON: VEO 989, second sentence.

24 MR. SHEEAN: Okay.

25 Q (BY MR. GISLESON) And then, turning to Annex II

1 Q So was -- strike that. Did you understand that
2 VEO only wanted to focus on purchasing the technology at
3 this point?

4 A That -- yeah, that basically that's what VEO
5 wanted to do at this time, rather than trying to do a
6 license agreement. In the long term, they really wanted
7 to purchase the technology.

8 Q And under "Boiler Technology," paragraph #1, on
9 page VEO 995, Mr. White wrote: "This paragraph requires
10 modification as it limits the purchase to that of the 'M'
11 Series and is to be expanded to include all 'O' type
12 boilers. It has always been the intention of VEO to
13 purchase the 'O' boiler technology which includes the
14 'M' Series boilers. The purchase of the 'O' Series would
15 enable VEO to be the sole and exclusive owner of the
16 technology up to the capacity range." Do you see that?

17 A Yes.

18 Q What's the difference between "O" series and the
19 "M" series, as you understand it, at the time of this
20 exchange?

21 A My understanding was the "O" series is the --
22 sort of the main line or -- or the main product line of
23 Keystone boiler, and "M" series sort of complements or is
24 another line that we kept using the word "antiquated,
25 old". I don't know it's because of years actually older

1 of the design or they were just older designs, but
2 basically "O" line was the main line for Keystone boiler.

3 Q The old line was the "M" line?

4 A No. The main line is the "O" line. And the
5 older line is the "M" line was my understanding.

6 MR. JONES: You mean the primary line.

7 THE WITNESS: Primary line. I'm sorry.

8 Yeah, primary line. The main line, you know, of the
9 Keystone boilers.

10 Q (BY MR. GISLESON) So, what happened at this
11 point?

12 A This sort of negotiation died and we never
13 entered into any kind of sales agreement with Victory.

14 MR. GISLESON: Would you mark that, please.

15 (Exhibit No. 21 was marked.)

16 Q (BY MR. GISLESON) I'd like to show you what's
17 been marked as Kang Exhibit 21, which is a document
18 stamped VEO 1009 to 1011 -- I'm sorry -- to 1012. Do you
19 see how the -- on the first page, there's an e-mail from
20 Bob Gdaniec dated March 26th, 2004, to Mark White on
21 which you were copied, on the subject of the "Completed
22 Annex - EPTI Response"?

23 A Yes.

24 Q And he is responding to Mark White's e-mail on
25 the same page, from the same date, in which he wrote:

1 the proposed License Agreement and Option to Purchase
2 between the parties?

3 A No, I don't know all the detailed comments on
4 this side, because there's so many comments going back
5 and forth, but I'm sure this is one of the latter, yeah
6 or -- sort of the final drafts that went back and forth.

7 Q This is basically the last and final offer from
8 EPTI?

9 A Yes.

10 Q Was this accepted by VEO?

11 A No.

12 Q Was this the end of the discussions?

13 A Yes. We never further went down on this
14 discussion of the sales agreement. I should really call
15 that "License Agreement and Option to Purchase," the way
16 it says at the top, just to clarify that.

17 Q What did you understand the deal breaker was
18 that prevented EPTI from selling technology to VEO?

19 A Basically, for the price that -- that Victory
20 wanted to buy, the things that Victory wanted were not to
21 be included from our end, so we had a, basically,
22 disagreement on too much of major items to ever reach
23 a -- a fruitful agreement on this topic.

24 Q Were the engineers also telling you that EPTI
25 should not sell the "O" type, or "O" series, technology?

1 A Yes, but, then, as the president, I said
2 everything is for sale for right price; it just wasn't
3 the right price.

4 Q After those discussions fell apart, did Mark
5 White or anyone else from VEO contact you or someone else
6 from EPTI again to discuss the possibility of VEO
7 acquiring technology from EPTI?

8 A No.

9 MR. SHEEAN: John, do you want to take a
10 two-minute break while you're reviewing those?

11 MR. GISLESON: That's fine. I think I'm --

12 VIDEOGRAPHER: 4:49, we're off the record.

13 (Break taken, 4:49 p.m.)

14 VIDEOGRAPHER: 4:54, we're back on the
15 record.

16 FURTHER EXAMINATION

17 Q (BY MR. SHEEAN, 4:54 p.m.) Mr. Kang, I just
18 have a few follow-up questions. Mr. Gisleson's indicated
19 he's done --

20 A Okay.

21 Q -- with his direct examination of you, and I
22 just have a few follow-up questions. Looking, first, at
23 what we had marked as Kang Deposition Exhibit No. 13.

24 A Okay.

25 Q This was the July -- or I'm sorry -- January 14,